

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BILLANTI CASTING COMPANY, INC.,

Plaintiff,
-against-

ORDER
CV 11-2932 (LDW)(ARL)

FRANK BILLANTI CASTING COMPANY, INC.
and FRANK L. BILLANTI,

Defendants.

LINDSAY, Magistrate Judge:

Before the court is the defendants' letter application seeking to compel the plaintiff to take the deposition of Ralph Pastore via subpoena. The plaintiff opposes the motion by letter dated March 28, 2012. For the reasons set forth below, the motion is granted.

On December 15, 2011, the plaintiff noticed the 30(b)(6) deposition of the defendant Frank Billanti Casting Company, Inc. The deposition notice set forth matters for the examination including the amount of services provided and profits attributable to the use of the mark at issue in this action. The defendant designated Katherine Billanti, its Director of Communications and Administration, who appeared for a deposition on February 28, 2012. However, Ms. Billanti had no knowledge of the financial matters of the company. Accordingly, on March 1, 2012, counsel for the plaintiff suggested that the defendant produce its accountant to answer any questions regarding matters on which Ms. Billanti was not competent to testify. The defendant objected to the demand in view of the fact that it had no control over Mr. Pastore.

The defendant is correct that the plaintiff cannot dictate the choice of a corporation's 30(b)(6) representative. Accordingly, if the plaintiff wishes to pursue the deposition of Mr. Pastore, the plaintiff must do so pursuant to a subpoena under Fed. R. Civ. P. 45. However, the defendant remains obligated to designate one or more persons who can testify on its behalf about information known or reasonably available to the organization. Accordingly, on or before April 23, 2012, the defendant is to designate a person who has knowledge of the financial matters of the company. The continued 30(b)(6) deposition is to be held on or before May 4, 2012.

The deadline for discovery will be extended to May 11, 2012 for the limited purpose of completing the 30(b)(6) deposition and the deposition of Mr. Pastore. Any party planning on making a dispositive motion shall take the first step in the motion process by May 25, 2012. The final conference is adjourned to June 11, 2012 at 11:00 a.m. The parties are directed to

electronically file a proposed joint pretrial order prior to the final conference.

Dated: Central Islip, New York
April 17, 2012

SO ORDERED:

/s/
ARLENE ROSARIO LINDSAY
United States Magistrate Judge